



(4310-4J-P)

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Kickapoo Traditional Tribe of Texas – First Amended Beer and Liquor Tax Ordinance

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice publishes the amendment to the Kickapoo Traditional Tribe of Texas' Beer and Liquor Tax Ordinance. The Ordinance regulates and controls the possession, sale and consumption of liquor within the Kickapoo Traditional Tribe of Texas' Reservation. The land is trust land and this Ordinance allows for the possession and sale of alcoholic beverages within the Kickapoo Traditional Tribe of Texas' Reservation. This Ordinance will increase the ability of the tribal government to control the distribution and possession of liquor within their reservation, and at the same time will provide an important source of revenue, the strengthening of the tribal government and the delivery of tribal services.

DATES: *Effective Date:* This Amendment is effective as of [Insert date 30-days after date of publication in the FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Suzanne Chaney, Community Services Officer, Southern Plains Regional Office, Bureau of Indian Affairs, P.O. Box 368, Anadarko, OK 73005, Phone: (405) 247-1537; Fax: (404) 247-9240; or De Springer, Office of Indian Services, Bureau of Indian Affairs, 1849 C Street NW, MS-4513-MIB, Washington, DC 20240; Telephone (202) 513-7640.

SUPPLEMENTARY INFORMATION: Pursuant to the Act of August 15, 1953, Public Law 83-277, 67 Stat. 586, 18 U.S.C. 1161, as interpreted by the Supreme Court in *Rice v. Rehner*, 463 U.S. 713 (1983), the Secretary of the Interior shall certify and publish in the **Federal Register** notice of adopted liquor ordinances for the purpose of regulating liquor transactions in Indian country. The Kickapoo Traditional Tribe of Texas adopted this amendment to the Kickapoo Traditional Tribe of Texas' Beer and Liquor Tax Ordinance by Resolution No. 2011-892 on March 30, 2011.

This notice is published in accordance with the authority delegated by the Secretary of the Interior to the Assistant Secretary – Indian Affairs. I certify that the Kickapoo Traditional Tribal Council duly adopted this amendment to the Kickapoo Traditional Tribe of Texas' Beer and Liquor Tax Ordinance on by Resolution No. 2011-892 on March 30, 2011.

Dated: February 9, 2012

Larry Echo Hawk
Assistant Secretary – Indian Affairs.

The First Amended Kickapoo Traditional Tribe of Texas' Beer and Liquor Tax Ordinance reads as follows:

SECTION 100. ENACTMENT CLAUSE

This Ordinance is enacted pursuant to Article VII Sections g, h, j, k and r of the constitution of the Kickapoo Traditional Tribe of Texas. Be it enacted by the Council of the Kickapoo Traditional Tribe of Texas ("KTTT"), the following Beer and Liquor Tax Ordinance.

SECTION 101. TITLE AND PURPOSE

This Chapter shall be known as the Kickapoo Traditional Tribe of Texas Beer and Liquor Tax Ordinance. These laws are enacted to regulate the sale and distribution of liquor and beer products on all properties under the jurisdiction of the KTTT and to create the Kickapoo Tax Commission, which will be in charge of taxing beer and liquor sales to generate revenues so as to fund needed tribal programs and services.

SECTION 102. DEFINITIONS

Unless otherwise required by the context, the following words and phrases shall have the designated meanings:

- 1) "Tribe and/or Tribal and/or KTTT" shall mean the Kickapoo Traditional Tribe of Texas.
- 2) "Tribal Council" shall mean the Kickapoo Traditional Tribe of Texas Tribal Council as constituted by Section 1 Articles III and V, respectively of the Constitution of the Kickapoo Traditional Tribe of Texas.
- 3) "Commission" shall mean the Kickapoo Tax Commission.
- 4) "Tribal Lands" shall mean Indian Country as defined by 18 U.S.C. Section 1151 subject to the jurisdiction of the KTTT, including without limitation:
 - a) Tribal Trust Land. Any lands and waters held in trust by the Federal Government within the jurisdiction of the KTTT;
 - b) Tribal Properties in Trust Statutes Process. Lands and water in process to achieve trust status under the Federal Government within the jurisdiction of the KTTT; and

- c) Other Properties. All other lands and waters however acquired and not currently in process to achieve trust status under the Federal Government within the jurisdiction of the KTTT.
- 5) "Sales" shall mean the transfer, exchange or barter, by any means whatsoever, for a consideration by any person, association, partnership, or corporation, of liquor and beer products.
- 6) "Alcohol" means and includes hydrated oxide of ethyl, ethyl alcohols, ethanol, spirits, or wine, and beer in concentration of more than one half of one percent of alcohol by volume, from whatever source or by whatever source or whatever process produced including all dilutions and mixtures of the substance.
- 7) "Beer" means any malt beverage containing one half of one percent or more alcohol by volume and not more than four percent alcohol by weight and obtained by the alcoholic fermentation of an infusion or decoction of pure hops, or pure extract of hops, barley, or other grain, malt or similar products. "Beer" includes among other things, beer, ale, stout, lager beer, porter and other malt or brewed liquors.
- 8) "Liquor" or "Alcoholic Beverage" means any alcoholic beverage including alcohol, spirits, wine, whiskey, brandy, gin, rum, ale, malt liquor, tequila, mescal, habanero and/or barreteago and beer in excess of 4% alcohol concentration and all fermented, spirituous, vinous or malt liquor or any other intoxicating liquid, solid, semi-solid or other substance, patented or not, containing alcohol, spirits, wine or beer and intended for oral consumption.
- 9) "Licensed Premises" means the location within the KTTT at which a person licensed to sell alcoholic beverages under this ordinance carries on such business, and includes all

related and associated facilities under the control of the Licensee whether they are called a licensed premises, outlet or liquor outlet. Moreover, where a Licensee's business is carried on as part of the operation of an entertainment or recreational facility, the "licensed premises" shall be deemed to include the entire entertainment or recreational facility and associated areas.

10) "Operator" shall mean any person twenty-one (21) years of age or older, properly licensed by the Commission to operate a liquor and/or beer outlet.

11) "License" shall mean the privilege granted pursuant to this ordinance to any person to sell or distribute liquor or beer within the KTTT Jurisdiction.

12) "Chairman", as used in this Ordinance, shall mean the chairman of the Tax Commission. The Tribal Council will name the Chairman of the Tax Commission. The Chairman will have the authority to call and preside over meetings, recommend policies and other action to be taken, and represent the commission with third parties.

SECTION 103. PROHIBITION

The sale, introduction for sale, purchase, or other dealing in beer, liquor and/or alcoholic beverages, except as is specifically authorized by this title, is prohibited within Tribal Lands.

SECTION 104. LIQUOR AND BEER TAX COMMISSION

Enactment: The Kickapoo Traditional Tribe of Texas' Tax Commission is hereby created.

The Commission shall consist of seven (7) Commissioners to be appointed by the Tribal Council. The initial Commission shall serve for staggered terms, three of the initial members will serve for two years. The remaining four initial members will serve for four years. Thereafter the Tribal Council will appoint or reappoint, as determined by the Tribal Council to be in the best interest of the Commission, Commissioners to four year terms. Five of the Commission shall be

Tribal members. All decisions, actions and/or orders shall be by majority vote. A minimum of four members of the commission will constitute a quorum. No action will be taken, order or decision made unless there is a quorum present at the meeting where said action, order and/or decision is being voted upon. The Commission shall operate by policies and procedures approved by the Tribal Council. The minimum qualifications a person must have to serve as a Commissioner shall be as follows:

- 1) Must be over the age of eighteen (18); and
- 2) Must have no felony convictions.

The Commission shall be empowered to:

- 1) Administer this law by exercising general control, management, and supervision of all liquor and beer sales, places of sale and sales outlets as well as exercising all powers necessary to accomplish the purpose of this law.
- 2) Subject to Tribal Council approval, adopt rules and regulations in furtherance of the purpose of this law and in the performance of its administrative functions.
- 3) Enforce the rules and regulations in furtherance of the purpose of this law and in the performance of its administrative functions.

SECTION 105. APPLICATION FOR LIQUOR AND BEER OUTLET LICENSE

- 1) Application. Any person twenty one (21) years of age or older, may apply to the Commission for a liquor and/or beer outlet license.
- 2) Licensing Requirements. The person applying for such license must make a showing once a year and must satisfy the Commission of the following, including but not limited to:
 - a) that applicant is a person of good moral character;

- b) that applicant has never been convicted of violating any of the laws regarding the regulation of any spirituous, vinous, fermented or malt liquors, or of the gambling laws of the KTTT, the state of Texas, or any other tribe of the state of Texas or of the United States, or any foreign country, within three (3) years immediately preceding the date of the application;
- 3) Processing of Application. The Commission Chairperson or Authorized Representative shall receive and process applications and be the official representative of the Commission regarding receipt of applications and related Kickapoo Traditional Tribe of Texas matters. If the Commission or its authorized representative is satisfied that the applicant meets the criteria in Section 105 (2) (a) and (b) above, the Commission or its authorized representative may issue a license for the sale of liquor and/or beer products.
- 4) Application Fee. Each Beer and/or Liquor License application shall be accompanied by a non-refundable application fee to be set by regulation of the Commission, with the concurrence of the Tribal Council.
- 5) Discretionary Licensing. Nothing herein shall be deemed to create a duty or requirement to issue a license. Issuance of licenses is discretionary upon the Commission's determination of the best interest of the KTTT and the licensing grants a privilege, but not a property right, to sell liquor and/or beer within the jurisdiction of the KTTT at the licensed outlet(s).

SECTION 106. LIQUOR AND BEER LICENSES

Upon approval of an application, the Commission shall issue the applicant a liquor and/or beer license, valid for one year from the date of issuance, which shall entitle the operator to establish and maintain only the type of outlet being permitted. This license shall not be transferable. The

licensee must properly and publicly display the license in the place of business. It shall be renewable at the discretion of the Commission, by the submission by the Licensee of a subsequent application form and the payment of the application fee as provided in Section 105.

SECTION 107. SALES BY LIQUOR WHOLESALERS AND TRANSPORT OF LIQUORS UPON THE KTTT INDIAN COUNTRY

- 1) Right of Commission to Scrutinize Suppliers. The Operator of any licensed outlet shall keep the Commission informed, in writing, of the identity of suppliers and/or wholesalers who supply or are expected to supply liquor or beer stocks to the outlet(s). The Commission may, at its discretion, limit or prohibit the purchase of said stock from a supplier or wholesaler for the following reasons: nonpayment of tribal taxes; bad business practices, or sale of unhealthy supplies. A ten (10) day notice to stop supplier's purchases will be given by the Commission. However a stop purchase order may take effect immediately if there is a health emergency.
- 2) Freedom of Information from Suppliers. Operators shall, in their purchase of stock and in their business relations with suppliers, cooperate with and assist the free flow of information and data to the Commission from suppliers relating to sales and business arrangements between the suppliers, retailers and operators. The Commission may, at its' discretion, require the receipts from the suppliers of all invoices, bills of lading, billings or other documentary receipts of sales to the Operators.
- 3) Businesses shall comply with applicable Tribal Laws, for domestication or entry of foreign corporations.

SECTION 108. SALES BY RETAIL OPERATORS

- 1) Commission Procedures. The Commission shall adopt procedures which shall implement these laws and facilitate their enforcement. These procedures shall include prohibitions on sales to minors, provide for the locations where liquor may be consumed, identify persons prohibited from purchasing alcoholic beverages, designating hours and days when outlets may be open for business, regulate any other appropriate matters and institute controls of same.
- 2) Sales to Minors. No person shall give, sell, or otherwise supply liquor or beer to any person less than twenty-one (21) years of age, either for his or her own use or for the use of his parents or for use of any other person.
- 3) Consumption of Beer or Liquor upon Licensed Premises shall be prohibited unless otherwise allowed by regulation.
- 4) Conduct on Licensed Premises.
 - a) No Operator shall be disorderly, boisterous, or intoxicated on the licensed premises or any public premises adjacent thereto which are under his or her control, nor shall he or she permit any disorderly, boisterous, or intoxicated person to be thereon; nor shall he or she use or allow the use of profane or vulgar language thereon.
 - b) No Operator shall permit suggestive, lewd, or obscene conduct or acts on his or her premises. For the purpose of this section, suggestive, lewd or obscene acts of conduct shall be those acts or conduct identified as such by the laws of the KTTT or that may be considered as such by a reasonable person.
- 5) Employment of Minors. No person under the age of twenty-one (21) years shall be employed in any service in connection with the sale or handling of liquor and/or beer, either on a paid or voluntary basis.

- 6) Operator's Premises Open to Inspector. The premises of all Operators including vehicles used in connection with beer and/or liquor sales, shall be open at all times to inspection by the Commission or its designated representative.
- 7) Operator's Record. The originals or copies of all sales slips, invoices, and other memoranda, covering all purchases of beer and/or liquor by the Operator shall be kept on file on the retail premises of the Operator purchasing the same, for at least three (3) years after each purchase and shall be filed separately and kept apart from all other records and as nearly as possible shall be filed in consecutive order with each month's records kept separate so as to render the same readily available for inspection. All canceled checks, bank statements and books of accounting covering or involving the purchase of beer and/or liquor, and all memoranda showing payment for beer and/or liquor other than by check shall be likewise preserved for availability for inspection.
- 8) Conformity with State Law. Operators shall comply with the State of Texas Alcoholic Beverage Code to the extent required by 18 U.S.C. 1161. However, the KTTT shall have the fullest jurisdiction allowed under federal law over liquor and beer and related products or activities, within the boundaries of all the Tribal Lands as defined herein.

SECTION 109. TRIBAL EXCISE TAX IMPOSED UPON DISTRIBUTION OF BEER AND LIQUOR

- 1) Tribal Excise Taxes. The Tribe shall have authority to assess and collect tax on sales of liquor and beer products to the consumer or purchaser. The tax shall be collected and paid to the Commission upon Liquor and Beer products sold within the jurisdiction of the Tribe. The Tribe may establish differing tax rates for any given class of merchandise, which shall be paid prior to the time of retail sales and delivery thereof.

- 2) Added to Retail Price. An excise tax, to be set by the Tribal Council of the KTTT, on wholesale prices shall be added to the retail selling price of liquor and beer products sold to the consumer. Said excise tax will be presumed to be direct taxes on the retail consumer, pre-collected for the purpose of convenience and facility only.
- 3) Within 72 hours after receipt of any beer or alcoholic beverage by any wholesaler or retailer subject to this Ordinance, a tribal tax stamp shall be securely affixed to each package, denoting the collection of the tribal tax. Retailers or sellers of beer or alcoholic beverages within KTTT jurisdiction may buy and sell or have in their possession only beer or alcoholic beverages which have the Tribal stamp affixed to each package.

SECTION 110. LIABILITY FOR BILLS

The KTTT and/or the Commission shall have no legal responsibility for any unpaid bills owed by a liquor or beer outlet to a wholesaler supplier or any other person or entity.

SECTION 111. OTHER BUSINESS BY OPERATOR

An Operator may conduct another business simultaneously with managing a liquor or beer outlet. PROVIDED, if such other business may in any manner be affiliated or related to the beer or liquor outlet, it must be approved by majority vote of the Commission prior to initiation. Said other business may be conducted on the same premises as a liquor or beer outlet, provided that the Operator shall maintain books of account that clearly differentiate the liquor or beer portion of the business.

SECTION 112. TRIBAL LIABILITY AND CREDIT

- 1) No liability. Unless explicitly authorized by Tribal statute, Operators are forbidden to represent or give the impression to any person or entity that he or she is an official

representative of either the KTTT or the Commission, authorized to pledge tribal credit or financial responsibility for any of the expenses of his or her business operation. The Operator shall hold the KTTT harmless from all claims and liability of whatever nature. The Commission shall revoke Operator's license(s) if said outlet(s) is not operated in a businesslike manner, if it does not remain financially solvent, or does not pay its operating expenses and bills before they become delinquent.

- 2) Insurance. The Operator shall maintain at his or her expense adequate Insurance covering liability, fire, theft, vandalism and other insurance risks. The Commission may establish as a condition of any license, the required insurance limits and additional coverage deemed advisable, proof of which shall be filed with the Commission.

SECTION 113. AUDIT AND INSPECTION

- 1) All of the books and other business records of the licensed premises shall be available for inspection and audit by the Commission or its authorized representative at any reasonable time.
- 2) Bond for Excise Tax. The excise tax together with reports on forms to be approved by the Commission shall be remitted to the Commission's office on a monthly basis, unless the Commission specifies otherwise in writing. The Operator shall furnish a bond in an amount satisfactory to the Commission, guaranteeing his payment of excise taxes.

SECTION 114. REVOCATION OF OPERATOR'S LICENSE

- 1) Failure of an Operator to abide by the requirements of this Ordinance and any additional regulations or requirements imposed by the Commission will constitute grounds for revocation of the Operator's License as well as enforcement of the penalties provided in Section 115 of this Act.

- 2) Upon determining that any person licensed by the Commission to sell beer or alcoholic beverage is for any reason no longer qualified to hold such license or reasonably appears to have violated any terms of the Tribal and/or state license or regulations. The Chairman shall immediately serve written notice upon licensee directing that he show cause within ten (10) days why his or her Operator's license should not be revoked or restricted. The notice shall state the grounds relied upon for the proposed revocation or restriction. Violations may include failure to pay taxes when due and owing, or having been found by any forum of competent jurisdiction, including the Commission, to have violated the terms of a Tribal or state license or of any provision of this title.
- 3) If the Licensee fails to respond to the notice within the ten (10) days of service, the Chairman may issue an order, effective immediately, revoking the license or placing such restriction on the Licensee as the Chairman deems appropriate. The Licensee may, within the 10 day period, file with the Office of the Chairman a written response and request for hearing before the Commission.
- 4) At the hearing, the Licensee may present evidence and arguments regarding why his license should not be revoked.
- 5) The Commission after considering all of the evidence and arguments shall issue a written decision either upholding the license, revoking the license or imposing some lesser penalty (such as temporary suspension or a fine). Such decision shall be final and conclusive.
- 6) Within thirty days of the Commission's final decision, such decision may be appealed to the KTTT Court, by posting a bond with the Court, sufficient to cover the Commission's final assessment or ruling. Any finding of fact or omission are

conclusive upon the Court unless clearly contrary to law. The purpose of Court review is not to substitute the Court's findings of facts or opinion for those of the Commission's but to guarantee due process of law. If the Court should rule for the appealing party, the Court may remand for a new hearing giving such guidance for the conduct of such as it deems necessary. No damages or monies may be awarded against the Commission, its members, nor the KTTT and its agents and employees in such action.

SECTION 115. VIOLATION-PENALTIES

Any person who violates these laws or elicits, encourages, directs or causes someone else to violate these laws shall be guilty of an offense and subject to a fine. Failure to have a current, valid or proper license shall not constitute a defense to an alleged violation of the licensing laws or regulations. The Kickapoo Tribal Court shall have jurisdiction over the proceeding.

- 1) Any person convicted of committing any violation of this Ordinance shall be subject to punishment of up to one year imprisonment and/or a fine not to exceed Five Thousand Dollars (\$5,000.00).
- 2) Additionally, any person upon committing any violation of any provision of this Ordinance may be subject to a civil action for trespass and upon having been determined by the Court to have committed the violation, shall be assessed such damages as the Court deems appropriate under the circumstances.
- 3) Any person suspected of having violated any provision shall, in addition to any other penalty imposed hereunder, be required to surrender any beer or alcoholic beverages in such person's possession to the officer making the arrest or complaint. The surrendered beverages, if previously unopened, shall only be returned to said person upon a finding

by the Court after a trial on the Kickapoo Traditional Tribe of Texas merits that the individual committed no violation of the Tax Ordinance and of the Tribal Tax laws.

- 4) Any Operator who violates the provisions set forth herein shall forfeit all of the remaining stock on the licensed premises(s). The Commission shall be empowered to seize products.
- 5) Any stock, goods or other items subject to this Ordinance that have not been registered, licensed, or taxes paid shall be contraband and subject to immediate confiscation by the Commission or its employees or agents, provided, within 15 days of the seizure the Commission shall cause to be filed a forfeiture action against such property. The action shall allege the reason for the seizure or confiscation. Upon sufficient proof, the Court shall order the property forfeited and title vested in the KTTT.
- 6) Physical seizure of items shall be in accordance with the provisions contained in the KTTT law enforcement policies.

SECTION 116. POSSESSION FOR PERSONAL USE

Possession of beer or alcoholic beverages for the personal use by persons over the age of 21 years shall, unless otherwise prohibited by Federal or Tribal law or regulation, be lawful within the Tribal Lands.

SECTION 117. TRANSPORTATION THROUGH RESERVATION NOT AFFECTED

Nothing herein shall pertain to the otherwise lawful transportation of beer or alcoholic beverages through the Tribal Lands by persons remaining upon public highways where such beverages are not delivered, or sold or offered for sale to anyone within the Tribal Lands.

SECTION 118. SEVERABILITY

If any provision of these laws is held invalid, the remainder of the laws and their application to other persons or circumstances is not affected.

All prior statutes, ordinances, and resolutions enacted by the KTTT regulating, authorizing, prohibiting or in any way relating to the sale of beer or alcoholic beverages within the Tribal Lands are hereby repealed and have no further force or effect.

SECTION 120. SOVEREIGN IMMUNITY PRESERVED

Nothing in this Ordinance shall be construed as a waiver or limitation of the sovereign Immunity of the KTTT or its agencies nor their officers or employees.

SECTION 121. AMENDMENT

Pursuant to Article VII - Powers of the Traditional Council of the Tribes Constitution, the Traditional Council shall have the authority to amend the provisions of the foregoing Beer and Liquor Tax Ordinance.

SECTION 122-130. RESERVED FOR AMENDMENT

This Ordinance shall be effective upon certification by the United States Secretary of the Interior and its publication in the Federal Register.

READ, PASSED APPROVED AND ENACTED at a duly called Tribal Council meeting on the 30th day of March 2011.

Kickapoo Traditional Tribe of Texas

TRIBAL COUNCIL

/S/ Juan Garza, Jr.,

Council Chairman

/S/ Jesus Anico,

Council Secretary

/S/ Rogelio Elizondo,

Council Treasurer

/S/ David J. Gonzalez,

Council Member

/S/ Nanate Hernandez,

Council Member

[FR Doc. 2012-4052 Filed 02/21/2012 at 8:45 am; Publication Date: 02/22/2012]